

May 27, 2020

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## **VIA CERTIFIED MAIL**

PPG Industries, Inc.

c/o The Prentice-Hall Corporation System, Inc.

8040 Excelsior Drive, Suite 400

Madison, WI 53717

Anne M. Foulkes

Senior Vice President, General Counsel and

Secretary

PPG Industries, Inc.

One PPG Place

Andrew Wheeler

Office of the Administrator

**Environmental Protection Agency** 

Mail Code 1101A

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Washington, DC 20460

Preston D. Cole

Secretary

Wisconsin Department of Natural Resources

101 S. Webster Street

Madison, WI 53703

Pittsburgh, PA 15272

Kurt Thiede

Regional Administrator

Environmental Protection Agency Region 5

Mail Code: R-19J

77 West Jackson Boulevard

Chicago, IL 60604-3507

Mark K. Dausch

Attorney at Law

**Babst Calland** 

Two Gateway Center

603 Stanwix Street, Sixth Fl.

Pittsburgh, PA 15222

Re: Notice of Intent to Sue PPG Industries, Inc. Under Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act for Contributing to Contamination that May Present an Imminent and Substantial Endangerment to Health or the

**Environment** 

Dear Ladies and Gentlemen:

This letter provides notice that Barclay Lofts LLC intends to sue PPG Industries, Inc. ("PPG") under section 7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B), in order to remedy conditions arising from the handling, storage, treatment, transportation and/or disposal of solid and hazard wastes, including but not limited to, polychlorinated biphenyls ("PCBs"), volatile organic compounds ("VOCs"), metals (primarily chromium, hexavalent chromium, trivalent chromium arsenic and lead), and polycyclic aromatic

hydrocarbons ("PAHs"), that may present an imminent and substantial endangerment to health or the environment. PPG has contributed to these conditions through its ownership, operation, and control of the properties located at 300 South Barclay Street and 139 East Oregon Street, Milwaukee, Wisconsin (the "Barclay Properties") along with other buildings and facilities associated with the former PPG Paint and Varnish Division operations (collectively, the "Facility") in Milwaukee.

### The Barclay Properties

The Barclay Properties consist of two parcels. The 300 South Barclay parcel is 0.72 acres in size and is occupied by a five-story building, known as Building 11, with a full basement and penthouse. The 139 East Oregon parcel is 0.877 acres in size and contains three vacant buildings, Buildings 33, 34, and 35. Buildings 33 and 34 are three-story buildings with concrete slab-ongrade construction. Building 35 is a single-story building. The four buildings located on these parcels are listed on the Wisconsin State and National Registers of Historic Places as contributing buildings within the East Oregon and South Barclay Industrial Historic District. Barclay Historic LLC plans to redevelop at least Buildings 33 and 34.

## **RCRA's Citizen Suit Provision**

Section 7002(a)(1)(B) of the federal Resource Conservation and Recovery Act ("RCRA"), commonly known as RCRA's citizen suit provision, authorizes affected persons to sue:

any person, . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

42 U.S.C. § 6972(a)(1)(B).

### PPG's Ownership and Operations at the Facility

PPG's predecessor, the Pittsburgh Plate Glass Co., acquired the Milwaukee-based Patton Paint Company in or around 1900. In 1920, as part of a broader consolidation of all of the businesses that Pittsburgh Plate Glass Co. was operating, the operations of Patton Paint and other paint and varnish companies were consolidated into PPG. The paint and varnish business located in Milwaukee was operated as PPG's Paint and Varnish Division by PPG at the Facility until approximately 1975 across approximately nine acres. Records show that PPG owned the Facility from approximately 1905 to 1975.

<sup>&</sup>lt;sup>1</sup> Pittsburgh Plate Glass Co. changed its name to "PPG Industries, Inc." in 1968. For convenience, PPG and its predecessors will be referred to collectively as "PPG" in this letter.

Records further show that, in 1940, during PPG's ownership and operation at the Facility, there were at least twenty-five (25) underground storage tanks ("USTs") at the 300 South Barclay Street site. The USTs stored thinner, mineral spirits, resin, lacquer thinner, fuel oil, arsenic acid, hydrochloric acid, sulfuric acid, acetic acid, nitric acid, bichromate and dichromate. In addition, sixteen (16) aboveground storage tanks ("ASTs") were located inside Building 35 at 139 East Oregon Street.

The 1951 Sanborn Fire maps depicting the Facility indicate that Building 11 was a "dry color factory," and had outdoor storage with twenty-six (26) storage tanks, Building 33 was a manufacturing building for Minimax varnish and lacquer, Building 34 was labeled as the "Manway Warehouse," and Building 35 had sixteen (16) ASTs. The building located east of Barclay Street is labeled as a building with wood floors and was described as a "lacquer plant."

It cannot be disputed that PPG owned and operated the Facility from at least 1905 to 1975, or that PPG contributed to the past "handling, storage, treatment, transportation or disposal" of solid and hazardous waste at the Facility. It is evident that PPG's operations used materials that now contaminate the soil and groundwater at the Facility, as well as the interior of the buildings at the Facility. Further, the location and nature of the contamination demonstrate that the disposal of these substances was associated with PPG's operations at the Facility.

# PPG's Past Contributions to the Handling, Storage, Treatment, Transportation or Disposal of Solid and Hazardous Waste

Upon information and belief, PPG, in connection with its activities at the Facility during its operation and ownership, contributed to the past handling, storage, treatment, transportation or disposal of solid and hazardous waste at the Facility. The VOCs, PAHs, PCBs and metals found in the soil, groundwater and interior of the buildings at the Facility are, or are evidence of the disposal of, "solid and hazardous waste." Historic records demonstrate that PPG used these materials in its operations at the Facility, and their presence in soil and groundwater and on interior building materials demonstrates that they were discarded during those operations.

Investigations of the soil, groundwater and building interiors at the Facility demonstrate that the soil is contaminated with VOCs, PAHs, PCBs and metals (primarily chromium, hexavalent chromium, trivalent chromium, arsenic and lead).

The same contaminants were found in groundwater. Petroleum VOCs were found in groundwater wells south and east of Building 11.

Sub-slab vapor sampling under Buildings 33 and 34 showed that TCE exceeded the Wisconsin target sub-slab vapor risk under both buildings.

With respect to the building interiors, twenty-five (25) bulk samples were collected from porous building materials (wood, concrete and brick) in March 2017. Based on known historical operations conducted in the various buildings and chemical usage, the compounds of potential

concern ("COPCs") included VOCs, semi-volatile organic compounds ("SVOCs"), PCBs, target analyte list metals, and cyanide.

The sampling detected 24 COPCs – 15 metals, 6 SVOCs, cyanide and PCBs. Chemicals of Concern ("COCs") were detected in each of the buildings as follows:

- Building 11: PCBs, cyanide, SVOCs, hexavalent chromium, cadmium, arsenic and lead;
- Building 33: PCBs, cyanide, SVOCs, hexavalent chromium and lead; and
- Building 34: PCBs, cyanide, SVOCs, hexavalent chromium and cobalt.

Upon information and belief, PPG is responsible for the metals, SVOC and PCB contamination inside the buildings.

# The Solid and Hazardous Waste Disposed of at the Facility May Present an Imminent and Substantial Endangerment to Health or the Environment.

As noted above, the contamination resulting from the disposal of solid and hazardous waste at the Barclay Properties exceeds relevant soil and groundwater levels established by the Wisconsin Department of Natural Resources ("WDNR"). In fact, in 2011, the WDNR denied a request for site closure based in part on the failure of the then-current owner to demonstrate that its proposed remedial measures would be sufficient to address the direct contact concerns from contamination in the soil and groundwater or broader concerns resulting from groundwater contamination at the Barclay Properties.

Investigations demonstrate that contamination at the Barclay Properties exceeds standards established by the WDNR, including residual contamination levels ("RCLs") and protection of groundwater RCLs for soil, as well as background threshold levels for certain metals. In groundwater, contamination exceeded the relevant enforcement standards ("ES") for a number of contaminants. In addition, exceedances of target sub-slab vapor risk screening levels ("VRSLs") were found for benzene and tetrachloroethene.

In addition to high levels of contaminants in soil, groundwater and soil vapor, surfaces inside the buildings at the Barclay Properties are contaminated with PCBs, cyanide, SVOCs, hexavalent chromium, cadmium, arsenic, lead and cobalt.

Visual evidence shows that hexavalent chromium contamination from the building interiors has permeated the buildings through porous materials such as mortar.

As noted above, Barclay Lofts intends to redevelop the Barclay Properties and return then to productive use. This is in alignment with the City's plans for the area – the Barclay Properties are located within the boundaries of Milwaukee's Walker's Point Strategic Action Plan and Harbor District Water and Land Use Plan (December 2017). Both of these plans identify the area where

the Barclay Properties are located as ripe for redevelopment. Goals established in the Harbor District Plan include removal or resolution of "legacy contamination of land . . . in the District" and creation of "housing and employment opportunities that are accessible to a broad segment of the community." Harbor District Plan at 36. The description of ongoing development activities in the District is consistent with the plan for the Barclay Properties:

While the Harbor District was historically dominated by industrial and transportation uses, new uses have begun to move into the District in recent years. Industrial loft buildings are being converted to new housing, office, start-up, and retail space, and former brownfields are being reused for new mixed-use developments.

Harbor District Plan at 37.

If the Barclay properties are not remediated prior to redevelopment, the contamination in the soil, groundwater and building interiors, which resulted from PPG's contribution to disposal of solid and hazardous waste, may present an imminent and substantial risk to health and the environment. This level of contamination and the risk that it may present provide sufficient basis for the commencement of a RCRA lawsuit seeking to compel PPG to undertake an appropriate response.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

/s/ Elizabeth H. Schmiesing

Elizabeth H. Schmiesing

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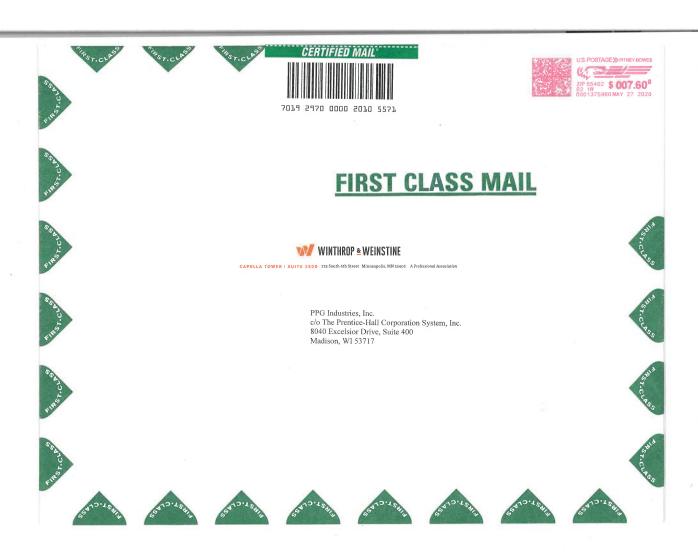
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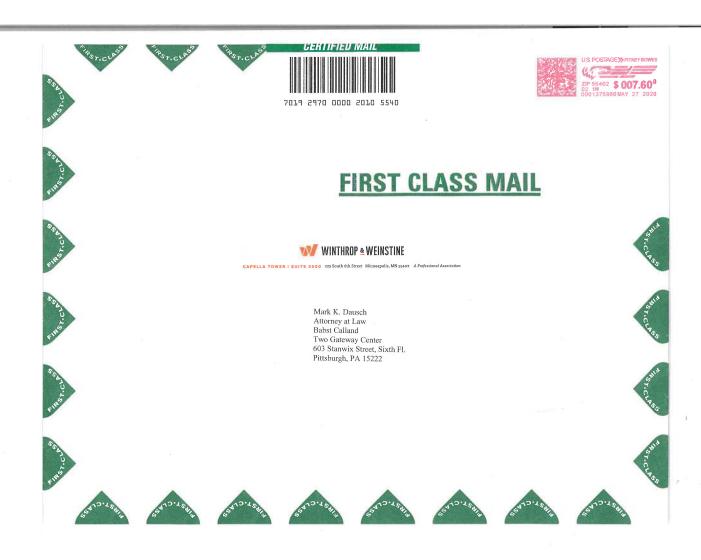
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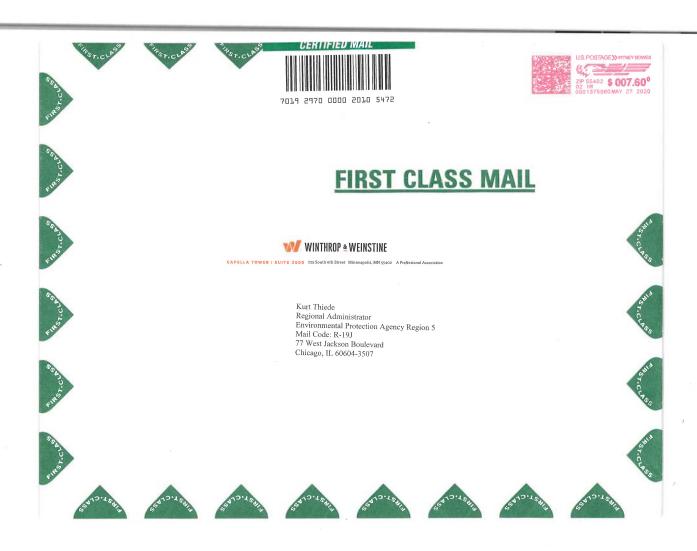
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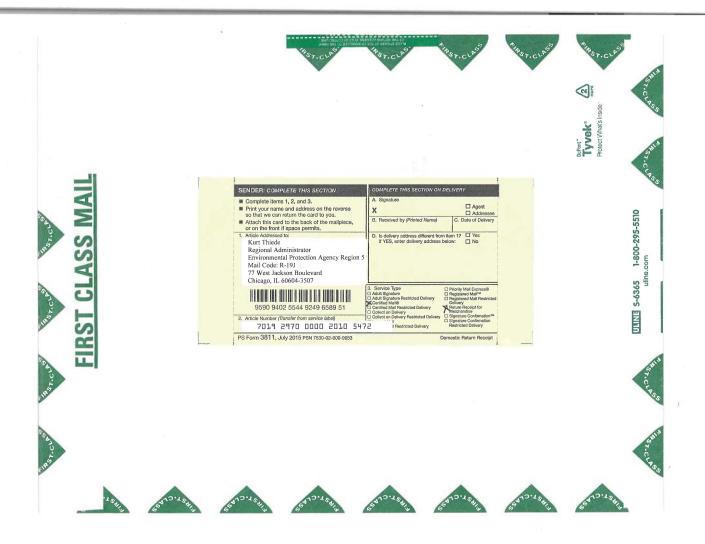


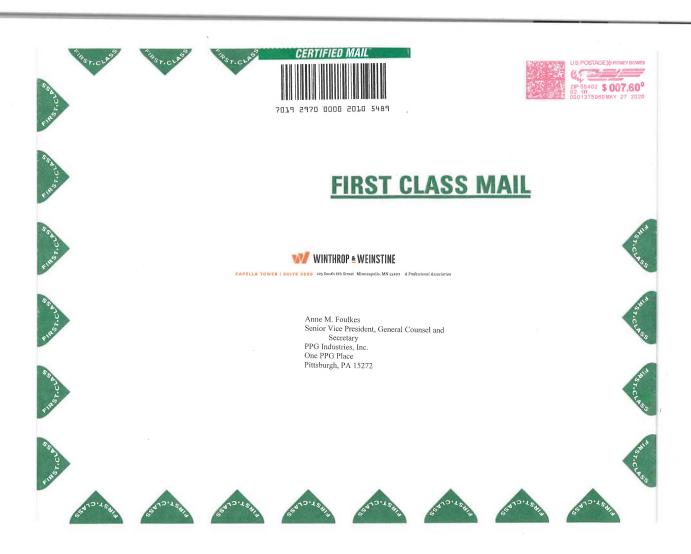




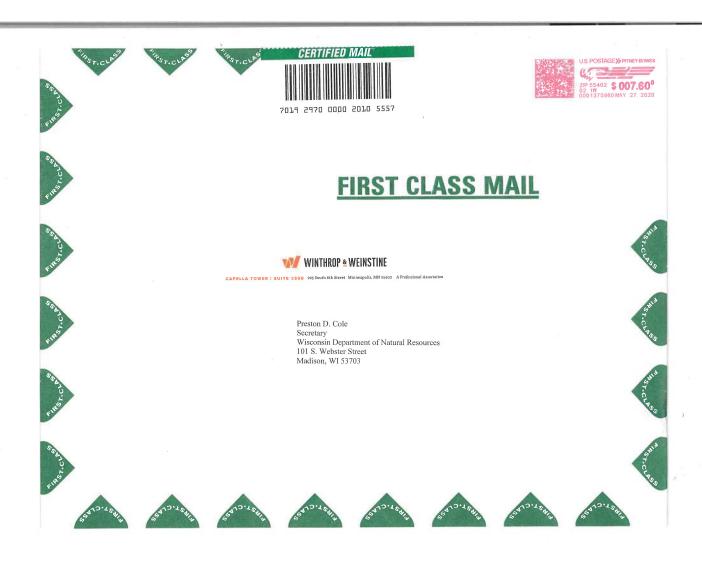




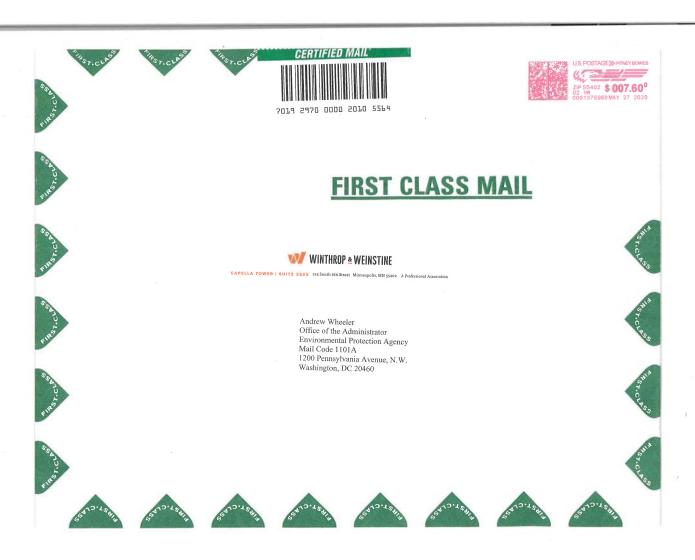


















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